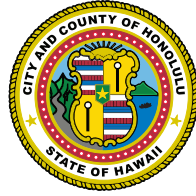


# DEPARTMENT OF THE CORPORATION COUNSEL



**Carrie K.S. Okinaga, Corporation Counsel**  
**Donna M. Woo, First Deputy Corporation Counsel**

## POWERS, DUTIES AND FUNCTIONS

The Corporation Counsel serves as the chief legal advisor and legal representative of all agencies, the City Council and all officers and employees in matters relating to their official powers and duties, and shall represent the City in all legal proceedings and shall perform all other services incident to the office as may be required by the Charter or by law.

## ORGANIZATION OF DEPARTMENT

The Department of the Corporation Counsel is organized into the administration and three other divisions, namely:

1. **Counseling and Drafting**
2. **Litigation**
3. **Real Property Tax**

## COUNSELING AND DRAFTING DIVISION

The Counseling and Drafting Division is comprised of 25 attorneys: a division head and 24 deputies corporation counsel. The Division is supported by 12 support staff, including four paralegal assistants and eight legal clerks. The Division performs the function of legal advisor to all the City agencies, the City boards and commissions, and the City Council and its committees. In this advisory function, the Division is responsible for rendering oral and written opinions to all of the entities it advises, for drafting bills and resolutions for submission to the City Council or the State legislature, for reviewing and approving legal documents to which the City is a signatory, and for attending all the meetings of the City Council, the Council Committees, and the City boards and commissions.

The Division performs the legal representation function, representing city agencies, in city and state administrative proceedings. The Division also performs the legal representation function in selected court proceedings such as eminent domain proceedings, quiet title, partitions of land court property, administrative appeals, foreclosures, bankruptcy, interpleader actions for the return of seized property and other matters as may be specially assigned.

## Statistics

For the fiscal year July 2007 to June 2008, the Division commenced the year with 3,827 outstanding opinion requests, thereafter received 1,167 requests, and completed and closed 844 requests, thus having a workload of 4,994 requests during the year. A large percentage of the outstanding opinion requests are awaiting closure in our database.

The Division commenced the year with 40 outstanding drafting requests, e.g., requests to draft bills, resolutions, leases, easements, contracts, affidavits, etc., thereafter received 180 requests, and completed and closed 157 requests, thus having a workload of 220 requests during the year. The year was closed with a total of 63 outstanding drafting requests.

The Division commenced the year with 964 outstanding requests for review and approval of legal documents, thereafter received 4,771 requests, and completed and closed 5,020 requests, thus having a workload of 5,735 requests during the year. The year was closed with a total of 715 outstanding requests for review and approval of legal documents.

The Division commenced the year with 331 outstanding pre-suit cases, i.e., adversarial proceedings pending before administrative bodies, thereafter received 78 requests, and completed and closed 59 requests, thus having a workload of 409 cases during the year. The year was closed with a total of 350 outstanding requests. The Division commenced the year with 492 outstanding case assignments, i.e., cases in any of the state or federal courts, thereafter received 119 requests, and completed and closed 96 requests, thus having a workload of 611 cases during the year. The year was closed with a total of 515 outstanding case assignments.

## Highlights and Accomplishments

### 2008 Legislative Liaison

The Division monitored legislation before the 2008 State Legislature that affected legal issues of the City. A deputy was designated to track the progress of bills in the Senate and the House and through the crossover dates. The Division also

coordinated and assisted with the preparation of legislative testimony for bills with legal issues that affected the City. (Reid M. Yamashiro, Dawn D. M. Spurlin)

### **Sunshine Law**

**Right to Know Committee v. City Council, City and County of Honolulu**, No. 27996, Intermediate Court of Appeals (December 28, 2007), Civil No. 05-1-1760-10 EEH, First Circuit Court, State of Hawaii. The decision of the Intermediate Court of Appeals (“ICA”), in the lawsuit entitled, **Right to Know Committee v. City Council, City and County of Honolulu** was received in December 2007. The lawsuit presented a question under the Sunshine Law of serial communication amongst council members deliberating council reorganization. The Division appealed the Circuit Court decision and plaintiffs filed a cross-appeal.

The ICA determined that the dispute must be considered in the specific factual context of council members deliberating reorganization under Council Resolution No. 05-243 and ruled that the Sunshine Law, Hawaii Revised Statutes Section 92-2.5, does not permit members of the Honolulu City Council to engage in serial communications involving a quorum of council members in deliberating council business. The Court’s ruling is limited to the specific facts of this case. Issues relating to serial communications in other factual contexts may be the subject of future adjudications. (Don S. Kitaoka, Reid M. Yamashiro)

### **COMMUNITY SERVICES SECTION**

**Kulana Nani Leased-Fee Acquisition.** The Division assisted the Deputy Managing Director, the Mayor’s Office of Special Projects and the City’s Department of Budget and Fiscal Services in negotiating an exchange of real property with Kamehameha Schools for the leased-fee interest under the City’s Kulana Nani affordable housing project. Under the terms of the agreement, Kamehameha Schools will transfer its leased-fee interest to the City, which at one time was listed for sale by Kamehameha Schools for \$6.9 million, in exchange for a cash payment of \$3.5 million and the transfer of certain roadway remnant parcels in the Kakaako area by the City. The cash payment will be the first expenditure made from the City’s recently established affordable housing fund, and represents a first step in the administration’s plan to dispose of the City’s affordable housing projects through the sale or long-term lease on terms preserving the affordability of the projects. The Division also assisted with council approval of the transaction. (Gordon D. Nelson)

**Kahuku Elderly.** The Division assisted the City’s Department of Community Services (“DCS”) in successful negotiations with the community foundation that manages the Kahuku Elderly housing project. The foundation had taken steps to remove the project from the pool of projects operated under the U.S. Department of Housing and Urban Development’s “project-based” Section 8 rental assistance program. The DCS believed that preservation of Kahuku Elderly as a “Project-based” operation was in the best interests not only of the elderly tenants who live there, but also in the best interests of the foundation itself. Ultimately the foundation agreed to extend Kahuku Elderly’s “project-based” status for an additional five years. (Gordon D. Nelson)

**NACo Prescription Drug Discount Card Program.** The City made available to its residents a free prescription drug discount card program sponsored by the National Association of Counties (“NACo”) that offers average savings of 20 percent off of the retail price of commonly prescribed prescription drugs. The City is eligible for participation in the NACo sponsored program through our city council’s affiliation with and membership in the Hawaii State Association of Counties. The Division assisted the City Council and the City’s Department of Community Services in jointly instituting the program through an agreement administered by Caremark Rx, Inc., and the adoption by the City Council of a resolution to undertake the program. The Division also provided guidance to the City Council and the Department of Community Services for procedures to implement and administer the program. (Amy R. Kondo)

**Matsuda v. City and County of Honolulu**, No. 06-15337, U.S. Ninth Circuit Court of Appeals (January 14, 2008), Civil No. 05-00125 (DAE-LEK), U.S. District Court for the District of Hawaii. The Division received in January 2008, the decision of the U.S. Ninth Circuit Court of Appeals in the case entitled, **Matsuda v. City and County of Honolulu**, an appeal involving the City’s repeal of its condominium conversion law, Chapter 38, Revised Ordinances of Honolulu. Plaintiffs in the lawsuit are condominium lessees of the Discovery Bay condominium who sought to invoke the provision of the City’s condominium conversion law to compel the sale to them of the leased-fee interest in their respective condominium units. The U.S. Ninth Circuit Court of Appeals vacated the decision of the U.S. District Court, District of Hawaii, that granted summary judgment in favor of the City, and remanded the case for further proceedings.

Plaintiffs had applied for condominium conversion under Chapter 38 and had entered into contracts with the City to obtain the leased-fee interests to their apartments. Their applications had completed the administrative process and were pending before the City Council when the Council repealed Chapter 38 by Ordinance No. 05-001.

Ordinance No. 05-001 provided a “savings” clause for those condominiums that were already in the process of condemnation under Chapter 38 when Ordinance No. 05-001 became law. The approval of the City Council was the determinative event for the continuation of the leasehold condominium conversion process. Only those lessee-applicants who received council approval for the condemnation of their condominium units prior to the repeal of Chapter 38 were allowed to complete the process of condominium conversion. Plaintiffs did not receive city council approval for condemnation of their apartment units prior to the repeal of Chapter 38, and therefore they were unable to complete their condominium conversion.

Plaintiffs brought suit against the City, alleging that Ordinance No. 05-001 impaired the contracts that the plaintiffs entered into with the City as part of the leasehold conversion process, in violation of the Contracts Clause of the United States Constitution and in violation of plaintiffs right to substantive due process.

The U.S. District Court had granted summary judgment in favor of the City, holding that under the “reserved powers doctrine,” the City was not bound by contracts that limited the Council’s exercise of the power of eminent domain.

The U.S. Ninth Circuit Court of Appeals reversed the U.S. District Court ruling that the District Court erred in applying the “reserved powers doctrine,” and remanded the case to the District Court to apply a “heightened scrutiny test” in determining whether the City’s Ordinance No. 05-001 operated as a substantial impairment of a contractual relationship; whether the City ordinance is justified by a “significant and legitimate public purpose,” and whether the impairment resulting from the law is both “reasonable and necessary” to fulfill such public purpose. In light of its decision, the U.S. Ninth Circuit Court of Appeals also remanded the case to the U.S. District Court to reconsider plaintiffs’ due process claims. (Don S. Kitaoka)

## **FINANCE SECTION**

**Integrity Hotline.** The Division assisted the Mayor’s Project Management Office, Department of Budget and Fiscal Services, Internal Control Division, the Department of Human Resources, the Department of Customer Services and the City Ethics Commission with the establishment of an Integrity Hotline pilot program. The Division assisted with guidelines and protocols for the working group that oversees the hotline and we offered support and guidance on related legal issues.

The hotline is a confidential means at any time of the day or night, for employees and citizens to report suspected unethical behavior and waste, fraud and abuse. It was instituted to promote ethical behavior, prevent fraud, waste and abuse and addresses employee discrimination and harassment issues. (Geoffrey M. Kam)

**George Kahooohanohano, et al. v. State of Hawaii, et al.**, No. 26178, Supreme Court of the State of Hawaii, Civil No. 02-1-1001-04 (GWBC), First Circuit Court, State of Hawaii. With the assistance of Special Deputy Corporation Counsel, we received a decision in July 2007 from the Hawaii Supreme Court in this appeal by plaintiffs from a circuit court decision that ruled, among other things, that the individual plaintiffs and the police union have no constitutional right to a fiscally sound retirement system and that Act 100, 1999 Session Laws of Hawaii, is constitutional. The Supreme Court determined that Act 100 is unconstitutional and remanded the case to the Circuit Court for further proceedings on claims remaining in the lawsuit. There is no award of damages in this decision. The State of Hawaii filed a motion for reconsideration which was denied on September 28, 2007. The matter is pending in the Circuit Court.

This Hawaii Supreme Court appeal originated from a lawsuit in the First Circuit Court of the State of Hawaii filed in 2002, and was initially filed by two members of the police union and the police union against the State of Hawaii. The lawsuit challenged the constitutionality of Act 100 that provided for a credit in fiscal years 2000 and 2001 against the contribution of each of the state of Hawaii and the four counties to the state’s Employees’ Retirement System (“ERS”) from excess earnings from the ERS. After the filing of the circuit court lawsuit, two additional plaintiffs, who were members of the Hawaii Government Employees Association were joined, and the Trustees of the ERS and each of the four counties, including the City and County of Honolulu, intervened in the lawsuit. Plaintiffs alleged that Act 100 constituted a breach of contract and violated the provisions of Hawaii Constitution, Art. XVI, Sec. 2, which provides that membership in the ERS is a contractual relationship, the accrued benefits of which shall not be diminished or impaired.

Previously, in 1999, the City, and later joined by the County of Kauai, sued the Trustees of the ERS, to challenge the method of calculation of the credit provided for under Act 100 (1999). A favorable settlement in 2000 for the 1999 lawsuit resulted in a benefit to the City for the two fiscal years 2000 and 2001, of approximately \$32,000,000.00. Although the City was of the position that the 2000 settlement agreement afforded the City a defense to a claim from the ERS in the event the 2002 lawsuit determined that Act 100 was unconstitutional, the City determined that it must intervene in this case to ensure its interests were protected. It was estimated that a determination in the 2002 lawsuit that Act 100 was unconstitutional, would require an additional contribution by the City to the ERS of approximately \$68,000,000.00.

The circuit court lawsuit was concluded by rulings on various substantive motions; the court ruled that the individual plaintiffs and the police union have no constitutional right to a fiscally sound retirement system and that Act 100 is constitutional. The court dismissed all other pending claims in the lawsuit without prejudice, including the City’s cross-claim against the ERS, which alleged that based upon the City’s settlement agreement in the 1999 lawsuit against the ERS, the ERS could not pursue the City in the event there is a damage award against the City on the claims of the individual plaintiffs. (Diane T. Kawauchi)

**License of City-developed software to Montgomery County Hospital District, Texas.** The Division assisted the Department of Information Technology with an intergovernmental agreement between the City and County of Honolulu and Montgomery County Hospital District, a political subdivision of Texas, wherein the City granted Montgomery County a non-exclusive, non-transferable right to use a software program developed by the City to track radio equipment (such as in police and ambulance vehicles). Although Montgomery County would have no financial obligations for the license to use the City’s software, it would provide the City any modifications, upgrades or enhancements made to the software, which the City may use in improving the software for the City’s own use. The Division also assisted the Department of Information Technology in preparing the resolution for council approval of the intergovernmental agreement, which was submitted to and adopted by council. (Nicole R. Chapman)

**Pictometry.** The Division assisted the Department of Information Technology with the procurement of unique orthogonal and oblique aerial imagery from Pictometry International Corp. to be used in support of the City’s Wireless E-911 services. The Wireless E-911 system is used to dispatch police, fire, and EMS responders to the location of the emergency call. This application will provide a heightened visual information system for homeland security, 911 applications, public safety agencies, and first responders. (Geoffrey M. Kam)

**Public Service Company Taxes.** The Division assisted the Department of Budget and Fiscal Services (“BFS”), Internal Control Division, with the collection of delinquent public service company (“PSC”) taxes, interest, and penalties. PSC taxes are to be paid by certain public utilities in lieu of real property taxes.

The Division assisted BFS with the analysis of applicable law, the formulation of tax filing and payment forms with corresponding instructions, and the development of BFS policy regarding penalties and interest for delinquent payment.

As a result, over \$4,000,000 of incremental PSC tax revenue has been collected. The Division continues to assist BFS with further collection and other follow-up efforts. (Geoffrey M. Kam, Gordon D. Nelson)

**Punchbowl Improvements, Phase II.** The Division assisted BFS in negotiating the resolution of a decade-long dispute with owners of certain parcels along Punchbowl Street. The dispute centered on the ownership of a driveway parcel providing access to parking areas created for the use of owners who lost parking stalls as a result of the widening of Punchbowl Street above Vineyard Boulevard, and also involved questions of the valuation for the parking areas to be transferred to the owners. The Division also assisted with council approval of the negotiated resolution. (Gordon D. Nelson)

**Software development and maintenance agreement with EMSS, Inc. for Real Property Tax Assessment Division.**

The City and County of Honolulu, Real Property Assessment Division, sought to develop a program and design a city website, whereby city property owners may, at their election, register to receive real property tax assessment notices by e-mail, and appeal the City’s real property tax assessments and/or apply for exemptions online. Our division assisted with the negotiations and drafting of the professional services contract for the design, development and maintenance of the website, which included assisting with developing detailed functional requirements for the program and specific terms to protect the City’s interests in the areas of software development and maintenance. (Nicole R. Chapman)

## **INFRASTRUCTURE SECTION**

**State Legislation Relating to County Liability.** In 2007, a large boulder originating from an abutting parcel fell into a city park injuring a park user. In reviewing the City’s exposure to liability, it became clear that the immunity protection from dangerous natural conditions afforded by Act 82, Session Laws of Hawaii 2003, did not extend to a park user who was injured as a result of the rock fall. Act 82 established a risk management procedure for the design and placement of signs that warn of dangerous natural conditions on improved public lands to protect the state and counties from liability for injuries resulting from those dangerous natural conditions. Act 82 defines “improved public lands” to include lands in the county park system, but excluded public beach parks. Our efforts in the 2008 state legislative session were directed to amending Act 82 to extend the dangerous natural condition immunity to public beach parks. The Division assisted with the coordination of the City’s efforts, the coordination of efforts among the counties, drafting proposed language for the legislation, and meeting with state legislators to share the concerns of the City regarding the provisions of the pending bills seeking to amend Act 82. We were pleased to have Act 144 signed into law by Governor Lingle on June 5, 2008. Act 144 extends the immunity granted by Act 82 to public beach parks.

During the state legislative session, the Consumer Lawyers of Hawaii advocated that the exclusion of public beach parks from Act 82 was deliberate in consideration of the extraordinary immunity provisions already granted to public beach parks earlier in Act 190 (1996). However, the 2008 legislature recognized that public beach parks are an important part of the public park system and should not be singled out from other types of parks within the state. Accordingly, Act 144 was adopted to clarify that Act 82 applies to public beach parks. Following the adoption of Act 144, the Division advised city agencies to employ the provisions of Act 144 to the many beach parks that are located in areas abutting ocean cliffs that contain dangerous natural conditions, including rock hazards. (Dawn D.M. Spurlin)

**Mary Jane Dalumpinis vs. Kathy Vega and Lester Chang,** Civil No. 1SS08-1-00725, Honolulu District Court, State of Hawaii. In 2008, the City Department of Parks and Recreation (“DPR”) demolished the sole comfort station at Mokuleia Beach Park because of safety concerns with the structural integrity of the comfort station. Without a comfort station available to park users, the department initiated night closure hours for the park. Plaintiff, who resided at the Mokuleia Beach Park, filed a lawsuit in state District Court against the DPR Director and a DPR staff person seeking a temporary restraining order and injunctive relief to enjoin city personnel from harassing the plaintiff by barring the plaintiff from the park during the night closure hours. Plaintiff further alleged that city personnel stole plaintiff’s personal property. At the hearing on the plaintiff’s motion for temporary restraining order, District Court Judge Gerald Kibe found that city personnel who were legally in the park performing their assigned duties did not harass plaintiff or steal plaintiff’s personal property. The court dismissed the action with prejudice and dissolved the temporary restraining order. (Dawn D. M. Spurlin)

**Off-island Shipping of Municipal Solid Waste.** The Division assisted the Department of Environmental Services (“ENV”) in developing and issuing a Request for Bids to provide for the interim shipment of municipal solid waste to mainland disposal sites, until the City has developed additional waste-to-energy capacity at its HPOWER facility. The off-island shipment of municipal solid waste is one component of ENV’s integrated solid waste management program, which is intended to minimize the need for landfill disposal through reuse, recycling, waste-to-energy and other efforts. (Gary Y. Takeuchi)

**Waimanalo Gulch Sanitary Landfill.** The Division assisted the ENV in obtaining approvals for an extension of time to accept solid waste at Waimanalo Gulch, the City’s only municipal solid waste landfill. Without such an extension, the landfill would have been prohibited from accepting solid waste as of May 1, 2008, under the terms of the Special Use Permit for the landfill. ENV submitted an application for a two-year extension of the waste acceptance deadline in the Special Use Permit to the Department of Planning and Permitting, for processing through the City Planning Commission and State of Hawaii Land Use Commission. When two parties who were contesting the application were granted intervenor status in the permit application proceedings at the Planning Commission, the matter was conducted as a contested case hear-



ing. The Division represented ENV throughout the application process, including the contested case hearing. After the Planning Commission approved the requested extension, the Division also provided legal representation to ENV during proceedings before the Land Use Commission, which subsequently approved an 18-month extension of time.

The Division also has been involved in the effort by ENV to seek an expansion of the landfill, consistent with the City Council's selection in December 2004 of Waimanalo Gulch as the location of the future municipal solid waste landfill. An Environmental Impact Statement ("EIS") is being processed for the proposed expansion, and the extension request referred to above was submitted in order to obtain additional time to complete the EIS, which was delayed by the discovery of potentially culturally significant stone uprights in the proposed expansion area.

The Division also represented ENV in responding to a Notice and Finding of Violation ("NOV") issued by the State Department of Health for alleged violations at the landfill. ENV and co-respondent Waste Management of Hawaii, Inc., the City's landfill operator, appealed the NOV, and the proceeding was set for a contested case hearing. After the hearings officer denied a request of third parties to intervene in the proceedings following the filing of oppositions by the City and Waste Management, the matter was eventually settled, with Waste Management paying a reduced civil fine and agreeing to fund certain supplemental environmental projects, among other provisions. (Gary Y. Takeuchi, Paul Herran)

The Infrastructure Section, with the assistance of special deputy corporation counsel, has provided legal support pertaining to various enforcement and litigation matters involving the City's wastewater system, which are summarized in greater detail below.

**Sierra Club, Hawaii Chapter, et al. v. City and County of Honolulu, et al.**, USDC Civil No. CV04-00463 DAE-BMK. The Division continued to vigorously defend the pending federal district court lawsuit filed in July 2004 by plaintiffs Sierra Club, Hawaii Chapter, Hawaii's Thousand Friends and Our Children's Earth Foundation ("Plaintiffs" or "NGOs") against the City. The lawsuit seeks injunctive relief and penalties for alleged Clean Water Act violations arising from the City's wastewater collection and treatment system. Of the plaintiffs' original twelve claims, three claims have been dismissed by the court and the plaintiffs agreed to dismiss three more. The remaining claims have been further refined and narrowed by extensive motions. The City has also responded to expansive discovery issued by plaintiffs. (Kathleen Kelly)

**United States of America, et al. v. City and County of Honolulu**, USDC Civil No. 94-00765 DAE-KSC. In 1994, the United States Environmental Protection Agency (EPA) and the State of Hawaii Department of Health (DOH) filed an enforcement action against the City, identified as USDC Civil No. 94-00765 DAE-KSC, United States of America, et al. v. City and County of Honolulu. The action resulted in a 1995 Consent Decree that requires the City, among other things, to comply with the Clean Water Act, to establish a schedule under which the City is to implement preventive maintenance and sewer replacement and rehabilitation necessary to reduce and prevent spills, to implement and enforce its pretreatment program to regulate industrial discharges, and to develop and implement an effluent and sludge reuse program.

To meet these objectives, the City developed and is implementing a comprehensive collection system spill prevention program, carried out under the review and with the approval of EPA and DOH through at least 2019. The 1995 Consent Decree requires substantial capital improvement expenditures by the City for its collection system, which is reflected in the City's 20-year Capital Improvement Program budget. The court retains jurisdiction over the terms and conditions of the 1995 Consent Decree until termination.

The Infrastructure Section continues to support and advise the affected city departments regarding the requirements of the 1995 Consent Decree. In addition, with over ten years having elapsed since the entry of 1995 Consent Decree, the Infrastructure Section has assisted the City in working closely with the EPA and DOH over the past year to reach an updated agreement for requirements to assess, maintain and upgrade its wastewater system. These efforts are expected to continue into 2009. (Kathleen Kelly)

**United States of America, et al. v. City and County of Honolulu**, USDC Civil No. CV07-00235 DAE-KSC. As a result of one year of negotiations following the March 2006 Beachwalk spill, the United States Environmental Protection Agency, United States Department of Justice, State of Hawaii Department of Health and the City executed a Stipulated Order that requires the City to take certain actions to evaluate, repair, rehabilitate or replace certain force mains and one pump station in its wastewater collection system and develop site-specific spill contingency plans. The stipulated order was entered by the court in October 2007. The Infrastructure Section assisted in the development and entry of the stipulated order, and continues to provide advice and guidance regarding its requirements and implementation. (Kathleen Kelly)

**Applications for Renewed 301(h) Waivers for the Sand Island and Honouliuli Wastewater Treatment Plants**. The Infrastructure Section provided legal support for the City's response to tentative decisions by the EPA to deny applications for a renewed variance from secondary treatment for the Honouliuli and Sand Island Wastewater Treatment Plants. The Infrastructure Section assisted with the development of formal technical and legal responses that were submitted in August and December of 2007, respectively. The Infrastructure Section will continue to support the City in vigorously challenging these tentative decisions. The City has filed a Freedom of Information Act lawsuit against the EPA, to require the EPA to disclose documents relating to its tentative decisions, and has petitioned the Department of Health to update its water quality standards to more accurately reflect criteria protective of human health and the environment. (Kathleen Kelly)

## **LAND USE SECTION**

**Collection of Fines and Enforcement of Land Use Ordinance**. The Division continues to assist the City's Department of Planning and Permitting ("DPP") in its efforts to enforce provisions of the City's land use ordinance and other codes, to obtain correction of the violations and to collect outstanding fines imposed by DPP for the violations. Our efforts included

assistance with collection of fines or correction of violations of the City's building code, plumbing code, housing code, electrical code, land use ordinance, grading ordinance, and shore line setback rules and regulations. In the majority of instances, the violations were corrected and the outstanding fines were paid pursuant to negotiated settlement agreements. In a small number of cases, the Division was forced to commence foreclosure actions against the properties of non-responsive violators in order to protect the City's interest in the collection of fines and enforcement of its laws. (Brad T. Saito)

**Mass Transit.** The Division counseled and advised the Department of Transportation Services ("DTS") on issues related to city council legislation related to mass transit. The Division advised DTS on the Council's consideration and adoption of Resolution No. 07-376, CD1, FD1(B), which established a technical expert panel to select a fixed guideway technology. (Reid M. Yamashiro)

**City v. Wahiawa Water Company, Inc.,** Civil No. 99-4483-12 (GWBC), First Circuit Court, State of Hawaii. The City was successful in obtaining partial summary judgment in its favor in this condemnation lawsuit to acquire a sewer easement. The State Circuit Court ruled that the City was entitled to partial summary judgment in its favor on the defendant-property owner's claim for \$8.5 million in compensation due to the City's discharge of sewer effluent into the Wahiawa Reservoir aka Lake Wilson. The Circuit Court determined that the City had a preexisting right to discharge effluent into the reservoir pursuant to earlier easements, and that the City was not altering its right to discharge by acquiring the subject easement to discharge effluent from a different location. Based upon the Circuit Court's action to grant partial summary judgment, there was no trial in the case and the City obtained judgment in its favor for acquisition of the subject easement for the sum of \$50, the sum of just compensation that had been alleged by the City for the acquisition of this easement. (Winston K.Q. Wong)

**Laie Wastewater Land Documents.** The Division assisted ENV and the Department of Design and Construction ("DDC") in reviewing, revising and finalizing various deed and easement documents relating to the transfer of the Laie Wastewater Treatment Plant to the City. These documents involved the transfer of land and easements for sewer, drainage, flowage, access, and slope purposes from Hawaii Reserves, Inc. and Brigham Young University Hawaii, to the City. (Winston K.Q. Wong)

**Keep the North Shore Country v. City and County of Honolulu,** No. 28602, Intermediate Court of Appeals, Civil No. 06-1-0867-05 GWBC, First Circuit Court, State of Hawaii. The Division presented oral argument before the State Intermediate Court of Appeals in April 2008, in the lawsuit entitled, **Keep the North Shore Country v. City and County of Honolulu.** This appeal involves the Kuilima Resort wherein Plaintiffs demanded that a Supplemental Environmental Impact Statement ("EIS") be prepared for the planned expansion project. An EIS has been prepared for the project and accepted by the City in October 1985, as required by law. The Circuit Court ruled in favor of the City and Kuilima Resort Company, holding that a supplemental EIS was not required for the planned development. The Circuit Court determined that there were ongoing activities and actions on the expansion project throughout the intervening years and that the accepted EIS did not impose time limits on the phasing for the expansion project. Plaintiffs appealed the Circuit Court decision to the Intermediate Court of Appeals. The parties await issuance of the decision on appeal. (Don S. Kitaoka)

## LITIGATION DIVISION

The Litigation Division consists of eleven attorneys: a division head, and ten trial attorneys. The Division is supported by nine support staff which includes a supervisor, three paralegals, and four legal clerks.

The Litigation Division represents the City and County of Honolulu before all of the state and federal courts in the State of Hawaii, including the two appellate courts of the state of Hawaii, the United States District Court for the district of Hawaii, and the Ninth Circuit Court of Appeals. The Division processes and litigates all claims by or against the City<sup>1</sup>, seeks collection of monies owed to the City, and handles Subpoenas Duces Tecum directed to the Honolulu Police Department.

In addition to tort claims, the Litigation Division handles claims relating to contracts, construction, civil rights, natural resources, employment issues and other non-tort related matters.

## Statistics

During the 2007-2008 fiscal year, the Litigation Division handled a great number of cases against and for the City and County of Honolulu, including active lawsuits as well as pre-lawsuit claims, as set forth below:

Pending cases as of June 30, 2007:.....	2,555
Number of cases completed:.....	769
Number of cases opened:.....	1,276
Pending cases as of June 30, 2008: .....	2,653

## Highlights and Accomplishments

### Lawsuits

As in previous years, the Litigation Division continues to be involved in personal injury and civil rights actions filed against the City, its departments and its employees. During the past year, the Division took eight cases to trial<sup>2</sup> and filed dispositive motions in a number of other cases. The Division was successful in these trials and in the majority of the motions.

<sup>1</sup>The cases specified in this subsection are not a comprehensive listing of all cases handled by the Litigation Division and are merely offered as a representative sample of the types of matters assigned to the Division.

<sup>2</sup>This includes three trials in the Honolulu District Court and one trial in Small Claims Court.

Following is a brief summary of several of the cases successfully completed by the Division in the past year.

**Edenfield, et al, v. City and County of Honolulu, et al**, United States District Court for the District of Hawaii. Plaintiffs filed a lawsuit against the City and seven police officers alleging violation of their constitutional rights. This lawsuit arose out of an incident on October 4, 2002, when plaintiffs were in a truck operated by Arnold Willets. Police officers began to follow the truck in order to stop Willets for an investigation into Willets' earlier leaving the scene of an accident. Willets, who was armed, refused to stop and ultimately fired his gun at the police officers, with police officers themselves returning fire. This shooting occurred as Willets drove through Kaneohe Town with police officers following him. As Willets continued to try to get away from the police officers, his truck became stuck on a concrete wall adjacent to Kaneohe District Park. Although stuck on a wall, Willets continued to shoot at the police officers and then began shooting toward members of the public. The police officers returned fire. Willets eventually quit shooting and was arrested at the scene. The case was tried to a jury of eight. After seven days of trial, the jury returned its verdict in favor of the City and the officers. (Richard D. Lewallen, Curtis E. Sherwood)

**Pereza, et al, v. City and County of Honolulu, et al**, First Circuit Court of the State of Hawaii. This personal injury lawsuit arose out of plaintiff's trip and fall accident on a city sidewalk. On February 18, 2005, plaintiff, who lives in Kailua, left her home at approximately 7:10 a.m. to go jogging in her neighborhood (which she did on a regular basis three to four times a week). On that date, plaintiff was jogging on the sidewalk on Hele Street on the side of The Shack Restaurant, and tripped and fell injuring her shoulder. Plaintiff alleged that she had taken a new route for her run that day because she felt the sidewalk conditions on her regular route were poor and she was fearful of falling. At trial, plaintiff alleged that the City was negligent in its maintenance of the sidewalks. Plaintiff's husband also made a claim for loss of consortium. This case was in the court annexed arbitration program and after an arbitration hearing, plaintiff was found to be 10% negligent and was awarded damages. The City requested a new trial and the case was then tried by a jury of twelve. After a three-day trial, the jury returned its verdict, finding the majority of fault with plaintiff, thus barring plaintiff from the recovery of any damages. (Marie Manuele Gavigan, Kate Metzger)

**Annan-Yartey v. City and County of Honolulu, et al**, United States District Court for the District of Hawaii. This lawsuit arose out of plaintiff's arrest and subsequent detention at the Honolulu Police Department's Central Receiving Division ("CRD"). On June 15, 2004, plaintiff entered the Cades Schutte Building in downtown Honolulu to serve some legal papers on one of the occupants, Ernest Nomura. As a result of plaintiff's disruptive behavior, plaintiff was issued a trespass warning from the building but refused to leave, resulting in his arrest. Following his arrest, plaintiff was taken to CRD for booking. Plaintiff was unable to post bail after his booking, and he remained in CRD from early afternoon until approximately 6:30 a.m. the next morning, when he was taken to Honolulu District Court for arraignment. Plaintiff alleges that while at the Central Receiving Division, he was subject to strip and cavity searches in violation of his constitutional rights. This case was tried to a jury of eight. After three days of trial, the jury returned its verdict in favor of the City. Plaintiff has appealed this verdict. (Kate S. Metzger; Richard D. Lewallen)

**Leaeno, et al, v. Pistor, et al**, United States District Court for the District of Hawaii. This lawsuit, alleging an unconstitutional search, was filed by six plaintiffs, after the arrest of one of the plaintiffs in the family home. Plaintiffs sued five police officers, but one of the officers was dismissed from the case on motion, leaving the four remaining officers in the case. On March 20, 2005 (a Sunday night), the officers arrived at the plaintiffs' home after 10 p.m. to arrest plaintiff, Jerry Leaeno, on a complaint of harassment of a family member. The arresting officer knocked on the door and eventually Jerry's mother came out of the house to speak to the officers. When asked if Jerry was home, the mother stated that she did not know. The officer asked if he could come in the home to see if Jerry was there and the mother allowed the officers to come into the home. Inside, the officers with the mother quickly looked in the bedrooms and when they found Jerry, they arrested him without incident. After the arrest, plaintiffs alleged that the mother had not consented to the officers' entry into the home and asserted that the officers had forced their way in. The case was tried by a jury of eight. After a five-day trial, the jury returned its verdict in favor of the officers. (Marie Manuele Gavigan, Kyle K. Chang)

**Kim, et al, v. Southard, et al**, First Circuit Court of the State of Hawaii. This case arose out of an automobile accident that occurred on November 7, 2004, at the intersection of Kalakaua Avenue and Ena Road. Plaintiff was driving in the Diamond Head direction on Kalakaua Avenue in the left-most lane (which is located on the left side of the median), when his car was in a collision with the defendant's vehicle that was attempting to execute an illegal U-turn from the middle of the three Diamond Head bound lanes of traffic (which are located on the right side of the median). The defendant instituted a third-party action against the City alleging defective road design against the City. This case was in the court annexed arbitration program and after an arbitration hearing, defendant was found to be 100% negligent. (D. Scott Dodd)

**Inouye v. City and County of Honolulu, et al**, First Circuit Court of the State of Hawaii. This lawsuit arose out of Plaintiff's application for a permit to hold a surfing event on the north shore during the winter season. Due to the number of permit requests annually for the same time periods and the same sites, the City has promulgated rules by which it evaluates the permit applications. Plaintiff submitted a permit application, but was not awarded the dates and sites that he had requested. Plaintiff filed his lawsuit and also filed for a preliminary injunction seeking to enjoin the City from denying plaintiff a permit to conduct his surfing event, and mandating that the court grant him a permit to conduct his surfing event. After a three-day hearing on plaintiff's Motion for Preliminary Injunction, the court ruled in favor of the City and denied plaintiff's request for a Preliminary Injunction concluding that the City followed proper procedures in not awarding plaintiff a permit and that plaintiff had failed to establish that the City's actions were arbitrary and capricious. Plaintiff subsequently dismissed this lawsuit. (D. Scott Dodd, Kyle K. Chang, Dawn M. Spurlin)

**Palmer, et al, v. City and County of Honolulu, et al; Babas v. City and County of Honolulu**, United States District Court for the District of Hawaii. Plaintiffs instituted these lawsuits<sup>3</sup> alleging that police officers had used excessive force against them. Plaintiff Babas' action was premised upon an altercation that he had with police officers on December 2, 2004, in a parking lot outside of Dave & Buster's. However, the altercation resulted in plaintiff's arrest and subsequent indictment for: (1) Assault Against a Law Enforcement Officer in the First Degree, (2) Disorderly Conduct and (3) Attempted Resisting Arrest. Plaintiff pleaded no contest to these charges. The other plaintiffs alleged that the officers used excessive force against them when they attempted to help their friend, Babas. The City filed a motion for summary judgment which was granted by the court. Plaintiffs never served the individually named officers in these cases, and after granting summary judgment in favor of the City, the court dismissed the cases against the officers. (Curtis E. Sherwood)

**Cornelison v. City and County of Honolulu, et al**, First Circuit Court of the State of Hawaii. This lawsuit arose out of plaintiff's injury while a patron at the Laie Convenience Center in Laie. Plaintiff was in an area where the public is prohibited and he was injured while a city employee was moving a large rubbish bin. Plaintiff instituted his lawsuit against both the City and Wackenhut Corporation (the City's contractor on site). The City, pursuant to a contract with Wackenhut Corporation, tendered defense and indemnity of this lawsuit to Wackenhut. Wackenhut refused to accept the tender and the City filed a cross-claim against Wackenhut for a declaratory judgment that Wackenhut owed the City indemnity and defense for this lawsuit. The City was successful in obtaining a declaratory judgment that Wackenhut owed the City a defense of the action and the City was able to recover its attorneys fees for the defense of this lawsuit. (Kyle K. Chang)

The division successfully settled several civil rights cases against police officers (Seales, Musrasrik, Souza, Silva, Bloom, Urrutia). In these cases, police officers were accused of unlawful arrest/detention and/or excessive use of force. The division also successfully settled drowning cases in which negligence was alleged against the City (Kuhlmeier, Hoggs); cases alleging defective road design/maintenance (Filimoehala, Kamehaloha, Kaina); and several negligence cases (Rafanan, Takemura, Gedeon, Yacubovich, Robinson).

The division is currently defending the City in several high profile police cases (**Sunia, et al v. City**, and **Gaspar v. City**). Several motor vehicle accident cases involving the City are also being handled by the division (**Fellez v. City** and **Niupulusu v. City**). The division is also litigating numerous negligence lawsuits filed against the City (**Kuhns v. City**, **Wall v. City**, **Paly v. City**, **Villaneuva v. City**, **Neal v. City**).

The division has also taken the lead in defending the City in several non-traditional tort cases alleging improper employment practices, sexual harassment, workplace violence, whistleblower claims and retaliation (**Olipares v. City**, **Miller v. City**, **Bentzien v. City**, **Williams v. City**, and **Matsumoto v. City**). The division has taken on the task of representing city officials who have been sued in their individual capacity for alleged acts or omissions arising out of their employment status with the City (**Whang v. City**, **Black v. City**, **Siu v. City**). The division is also involved in defending a Declaratory Judgment action in which the promulgation of an administrative rule is being challenged (**AOAO Waikiki Shore, Inc. v. City**). The City successfully obtained summary judgment in this case, but the case is now pending in the Intermediate Court of Appeals.

The division was successful in cases in the Appellate Courts. In **Coloyan v. Badua, et al**, a case alleging an unconstitutional search, the City obtained a verdict after jury trial and plaintiff appealed to the Ninth Circuit Court of Appeals ("9<sup>th</sup> Circuit"). The 9<sup>th</sup> Circuit affirmed the jury verdict. In **Inouye v. Kemna, et al**, also a case alleging an unconstitutional search, the City obtained summary judgment in favor of the City and the City officials who had been sued. Plaintiff appealed the court's grant of summary judgment to the 9<sup>th</sup> Circuit. The 9<sup>th</sup> Circuit affirmed the lower court's grant of summary judgment in this case. In **Gonzales v. City and County of Honolulu**, a case alleging an unlawful arrest, the Hawaii Intermediate Court of Appeals upheld the lower court's grant of summary judgment in favor of the City.

Additionally, the division has been litigating claims against the City in actions previously handled by the Counseling and Drafting Division. The division has continued handling highly specialized and technical actions such as injunctive relief proceedings (**Onishi v. City**), and actions relating to the land or diversion of water (**Masters Properties v. City**, **Poland v. City**).

### **State Legislation**

The Litigation Division also continued with its advocacy of legislation favorable to the City by drafting proposed bills and testimony regarding tort reform, governmental immunity and governmental tort claim procedures. This past year, the division took an active role in its advocacy of legislation by testifying before numerous House and Senate Committees regarding various proposed bills that directly impact the City.

### **REAL PROPERTY TAX DIVISION**

The Real Property Tax ("RPT") Division is comprised of two attorneys. They are assisted by two support staff.

The RPT Division maximizes intake of real property assessment revenues to the City and County of Honolulu ("City") by efficiently managing cases and vigorously defending the City against real property tax appeals brought in Tax Appeal Court ("TAC"). On occasion, the RPT Division also defends the City against appeals brought before the Board of Review ("BOR").

The RPT Division provides legal advice and support to the Real Property Assessment Division ("RPAD"), the Treasury Division, and the Department of Budget and Fiscal Services ("BFS"), as necessary to supplement the Counseling and

---

<sup>3</sup>These lawsuits were subsequently consolidated for purposes of discovery and trial by stipulation of the parties.



Drafting Division's functions. Also, the RPT Division assists the RPAD in drafting and implementing procedures and proposed legislation that will support assessments and resolve disputed legal issues.

The RPT Division coordinates and works with the other counties in developing appraisal procedure and legislation, as well as litigation practices through the ongoing exchange of information and support of legal positions on common issues.

The RPT Division continues to build good working relationships with the TAC Judge and court personnel, while implementing office and court procedures to streamline prompt resolution of cases. The RPT Division continues to obtain information about properties through discovery in court cases to assist the RPAD and to optimize the assessment process, and uses the City's private consultant/appraiser for appraisal training and litigation support.

## **Statistics**

During the 2007-08 fiscal year, in resolving appeals before the TAC, the RPT Division recovered about \$1 million in total taxes and approximately \$987,581 above the tax amounts claimed by the taxpayers.

For the fiscal year, the RPT Division opened 16 new appeals and received 82 assignments, had a previous workload of 237 appeals and assignments, and completed and closed 16 appeals and 51 assignments. Additionally, the RPT Division received about four to six informal requests per week from the RPAD for advice and other assistance.

## **Highlights and Accomplishments**

### **Appeals and Related Matters**

**Thomas A. Marzec v. City and County of Honolulu**, No. 28287, Intermediate Court of Appeals ("ICA"). Appellant Marzec challenged dismissals by the BOR and TAC of his tax appeal, which was submitted to the BOR by facsimile transmission after the close of business on the last day for filing. Marzec argued that the ordinance does not preclude filing an appeal by facsimile transmission, while the City argued that lodging or filing an appeal with the BOR was invalid. Alternatively, the City argued that if faxing an appeal was valid, it had to have been faxed by 4:30 p.m. The matter has been fully briefed.

**Smith, et al., v. Kurokawa**, TAC Case No. 07-0099. The RPT Division defended the City against challenges to the constitutionality of tax exemptions granted to Hawaiian homestead lessees in this lawsuit, which was erroneously filed against the administrator of the RPAD and subsequently amended to name the City as defendant.

**Tax Appeal of Sharon's Plants, Ltd.**, BOR Nos. 42071, 42073 and 42077. Corporation Counsel defended against three BOR appeals that challenged the City's denial of the taxpayer's untimely petitions to dedicate three parcels to agricultural use. The BOR dismissed the appeals and the taxpayer did not pursue an appeal to TAC.

**Tax Appeal of Kalama Beach Community Center, Inc. ("KBCC")**, BOR No. 42538. In January, 2008, Corporation Counsel defended an appeal before the BOR in a case where the City had denied a charitable exemption to a charitable organization that leased beachfront property from a recreational and social organization. Because KBCC's rights to use the property were subject to the lessor's social and recreational use, KBCC's charitable use was not exclusive, as required by the ordinance. The City's exemption denial was upheld by the BOR and not appealed by KBCC.

### **Other Matters**

During the fiscal year, the RPT Division provided advice and assisted on a variety of other matters such as:

**Tracking and Taxation of City-Owned Real Property.** Corporation Counsel advised the Managing Director's Office, BFS and RPAD regarding the discovery of numerous commercial leases of city property which were not being assessed real property taxes. The RPT Division assisted in the review of leases, and drafted guidelines to assist RPAD in determining the taxability of such leases. The result of this project was the development and implementation of a new Property Asset Management System ("PAMS"), for which Corporation Counsel continues to provide advice. The eventual goal of PAMS includes the tracking and taxation of state and federal-owned real property as well.

**County Tax Credit.** The RPT Division advises the Treasury Division in its administration of the county tax credit and in appeals of a tax credit denial. Issues include, what qualifies as income, who is the titleholder, and whether the property was transferred at a time that would result in revocation of the credit. During the fiscal year, RPT handled 41 county tax credit matters.

**Home Exemption.** Sympathetic to the hardships facing the military, the RPT Division drafted an ordinance amendment, at the direction of BFS, that would allow an active duty member of the armed forces to qualify for a home exemption without having to occupy the home at the time of the assessment.

**2008 Statewide Board of Review Conference.** The RPT Division assisted the RPAD by planning the agenda and speaking on the legal panel for the statewide annual conference of the boards of review for each county, held at the Ala Moana Hotel.

**Advocacy Training for Real Property Appraisers.** The RPT Division planned and conducted advocacy training for the Honolulu and Kapolei real property appraisal staffs. The training included instruction on presenting cases and defending values before the BOR and TAC.

**Housing for Military Personnel.** The RPT Division assisted in the negotiation and drafting of a Contribution Agreement between the City and the company developing housing for naval personnel on the island of O'ahu.

**Public Use and Taxation of Private Property.** Corporation Counsel advised the Chair of the City Council regarding a dispute that arose when a community association restricted public use of a beach access at the end of a private road, and the real property tax implications of such actions.

## **ETHICS COMMISSION\***

**Charles W. Totto, Executive Director and Legal Counsel**

### **Mission**

The purpose of the Ethics Commission is to ensure that city officers and employees understand and follow the standards of conduct governing their work for the public. The commission's main focus is on conflicts of interest and the misuse of government resources or positions. The commission implements its objectives through a balance of training programs, advisory opinions, enforcement actions and legislation.

To find out more about the commission and its activities, visit the commission's web site at [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics). The web site has information about the commission's meetings, procedures, the standards of conduct, and useful ethics guidelines for the public and city employees and officers.

### **Resources**

The seven commission members are appointed by the Mayor and confirmed by the City Council. Commissioners serve staggered five-year terms. The members in FY08 were:

	<b><u>Term Expiration</u></b>
Lex R. Smith, Esq., Chair	December 31, 2011
Susan H. Heitzman, Vice Chair	December 31, 2010
Matthew H. Kobayashi	December 31, 2009
Wayne T. Hikida	December 31, 2009
Cynthia M. Bond	December 31, 2008
Patricia Y. Lee, Esq.	December 31, 2010

The commission was staffed with an executive director/legal counsel and a legal clerk. The commission's budget for FY08 was \$215,226.

### **Ethics Training**

The commission staff continued the mandatory ethics training program for all elected officials, managers, supervisors and board and commission members. Honolulu's mandatory ethics training program is one of the most ambitious in the United States. In FY08 we trained 574 city officials, bringing the total to over 4,100 public servants trained since the law was enacted. In addition, the commission staff presented our "Ethics Checklist" orientation to 383 new city officers and employees. As a result, all of the current city officials and more than half of the city's workforce have received some form of ethics training.

The commission introduced a mandatory ethics refresher course for supervisors and managers in FY08, which 783 employees attended.

Some agencies are taking advantage of the training beyond those who are mandated to attend. For example, all mayor's office and council staff, emergency medical services personnel, city attorneys and fire department recruits also attend training.

Training programs continue to greatly reduce the number of unintentional ethics violations. In addition, these programs should increase public confidence in our city employees and officers.

### **Advice and Enforcement**

In the past fiscal year, the commission received 350 requests for advice by and complaints against city personnel. By the end of the FY08, we had responded to 330 of these. The commission also received and reviewed 446 financial disclosure statements from high-level city officials.

The commission investigated 31 complaints of unethical conduct by city personnel. Since 2004, there has been a 244% increase in the number of complaints. This shows that the public and city workers will report misconduct and believe that the Commission offers a fair and effective forum to examine their concerns. Overall, the number of complaints against middle managers increased while the number of complaints against high-level administrators decreased.

The commission rendered important advisory opinions in the following cases:

- The commission found that a councilmember failed to file a full written disclosure of his conflict of interest arising from his private employment. Section 11-103, Revised Charter of Honolulu ("RCH"), requires disclosure before a councilmember may lawfully vote on a bill where the councilmember has a conflict of interest, or the councilmember's vote will be void. The commission did not recommend any discipline because the mistake was inadvertent and corrected upon notice. Advisory Opinion No. 2007-1.

- The commission found that a manager violated the conflict of interest laws when he hired a city employee whom he supervised to work for the manager's private business. RCH Section 11-102(c) prohibits city officers and employees from having financial interests or business activities that may tend to impair their judgment in carrying out their city duties. The commission was concerned that the manager placed himself in a position where his supervision of the employee could be affected by their private business relationship. Because there was no evidence that the manager treated the employee differently than other city employees, the commission recommended a written reprimand. Advisory Opinion No. 2007-2.
- The commission recommended termination from city employment for a supervisor who was found to have used city work time or his city-assigned truck to redeem recyclables on 106 occasions. RCH Section 11-104 prohibits the use of city resources, including paid time and vehicles, for an employee's personal benefit. Advisory Opinion No. 2007-3.
- The commission recommended a written reprimand for an employee who spent time at home and on personal errands while he was on paid city time. This conduct violated RCH Section 11-104 as a misuse of city time and vehicle. The commission noted that the employee's supervisor, who had recently retired, should have corrected the problem. Advisory Opinion No. 2008-2.
- The commission advised that two members of a city board were required to disqualify themselves from hearing a case because each had an apparent conflict of interest arising from financial or personal interests. The commission reiterated that the standard for a conflict of interest is whether, under the specific facts, a reasonable person would question the board member's impartiality. No showing of actual interference with the city officer's decision-making is required. Advisory Opinion No. 2008-1.

### **Legislation**

Along with the ethics boards of the other counties, the commission supported the introduction of bills at the legislature to confer jurisdiction on the circuit courts for impeachment actions against elected officers. These measures resulted in Act 107 (2008). A charter amendment to conform city law to state law will be on the November ballot.

A charter amendment to broaden the commission's authority to impose civil fines for misconduct on city officials with significant fiscal or discretionary authority will also be on the November ballot.

The commission supported a charter amendment to prohibit new department directors from directly affecting contracts with their former employer. This amendment did not obtain approval by the Mayor.

### **Integrity Hotline**

The commission worked with several other departments to deploy an integrity hotline pilot project which allows city employees to report fraud, waste, abuse and ethics issues to a live interviewer 24/7. The reports are then routed back to the City for review and appropriate action.